



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 788-00
21 April 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: SGT [REDACTED], II, US [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 17 Dec 99 w/attachments
(2) Subject's CO's e-mail dtd 14 Apr 00
(3) HQMC MI memo dtd 27 Mar 00
(4) MCRC memo dtd 3 Apr 00
(5) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the service record book (SRB) page 11 ("Administrative Remarks (1070)") entries dated 23 July 1996 and 22 January 1997, copies of which are in enclosure (1) at Tabs A and B, respectively. Enclosure (2) reflects he later amended his application by adding a request to remove the page 11 entry dated 24 July 1996, a copy of which is in enclosure (1) at Tab C. He also requested removal of the request for his relief for cause (RFC) dated 21 March 1997 and all related documents, copies of which are in enclosure (1) at Tab D. Finally, he impliedly requested removal of the Commandant of the Marine Corps (CMC) letter dated 9 September 1997 removing him from the 1996 Staff Sergeant Selection List, a copy of which is in enclosure (1) at Tab E, and promotion to staff sergeant with a date of rank and effective date of 1 May 1997.

2. The Board, consisting of Messrs. Frankfurt and Tew and Ms. Moidel, reviewed Petitioner's allegations of error and injustice on 20 April 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. On 17 March 1997, Petitioner received nonjudicial punishment (NJP) for alleged recruiter misconduct. He was charged with violation of Article 84, Uniform Code of Military Justice. By reason of this NJP, his RFC from recruiting duty was requested on 21 March 1997 (Tab D to enclosure (1)). On 12 May 1997, this NJP was set aside on the basis that Petitioner had been mischarged, and a rehearing was directed. On 20 May 1997, he received a new NJP for different charges, but on the basis of the same alleged misconduct. As shown in the CMC letter of 9 September 1997 (Tab E to enclosure (1)), he was removed from the 1996 Staff Sergeant Selection List by reason of the letter requesting his RFC and the original NJP for violation of Article 84. But for this removal action, he would have been promoted to staff sergeant with a date of rank and effective date of 1 May 1997. By letter of 16 July 1999, a copy of which is in enclosure (1) at Tab F, Petitioner's current commanding officer informed Petitioner that he had set aside the NJP of 20 May 1997, citing "...clear and convincing evidence [that he was] not guilty of the charges."

c. In correspondence attached as enclosure (3), the Headquarters Marine Corps Field Support Branch, Manpower Management Information Systems Division, the office having cognizance over Petitioner's request to remove the three page 11 entries has commented to the effect that this request has merit and warrants favorable action.

d. In correspondence attached as enclosure (4), the Marine Corps Recruiting Command has commented to the effect that Petitioner's request to remove documentation of his RFC should be approved as well, since it was based on the original NJP which has been set aside.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting the requested relief.

The Board substantially concurs with the advisory opinions at enclosures (3) and (4) in finding that the three contested page 11 entries and documentation of Petitioner's RFC should be removed.

The Board further finds that Petitioner's record should be purged of documentation reflecting his removal from the 1996 Staff Sergeant Selection List, and his record should be corrected to reflect he was promoted to staff sergeant with a date of rank and effective date of 1 May 1997. In this regard, they note that he was removed from the selection list by reason of the original NJP which has been set aside and the RFC request which was based on the same NJP. They further note that the new NJP he received for the same alleged misconduct was set aside as well, in light of evidence that he was not guilty. Finally, they note that but for his removal from the selection list, he would have been promoted to staff sergeant with a date of rank and effective date of 1 May 1997.

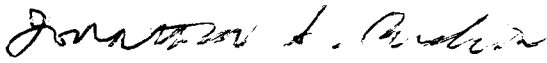
In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

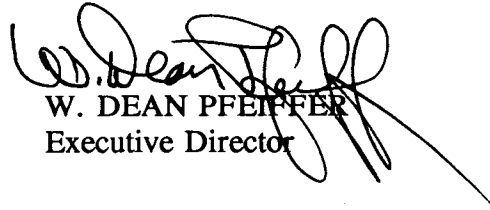
- a. That Petitioner's naval record be corrected by removing therefrom the three SRB page 11 ("Administrative Remarks (1070)") entries dated 23 July 1996, 24 July 1996 and 22 January 1997. In accomplishing this, the entries are to be either physically removed, or completely obliterated so they cannot be read, rather than merely lined through.
- b. That Petitioner's record be corrected further by removing the letter 1900 Admin dated 21 March 1997 requesting his RFC from recruiting duty and all related documentation ("S" ("Service") fiche, row E, images 11 through 14 and row F, images 1 through 4).
- c. That Petitioner's record be corrected further by removing all documentation of his removal from the 1996 Staff Sergeant Selection List, including the CMC letter 1450/5 MMPR-2 dated 9 September 1997 ("C" ("Commendatory and Derogatory") fiche, row G, image 9).
- d. That Petitioner's record be corrected further to show that he was promoted to staff sergeant with a date of rank and effective date of 1 May 1997.
- e. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director



788-00

DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1070

MI

27 MAR 2000

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF SERGEANT [REDACTED]
[REDACTED] USMC

1. We reviewed Sergeant [REDACTED] application and supporting documents concerning his request for removal of the Administrative Remarks page 11 entries dated 970122, 960724, 960723, and 950619 from his service records.
2. MCO P1070.12H, Marine Corps Individual Records Administration Manual (IRAM), authorizes commanders to make entries on page 11 which are considered essential to document an event in a Marine's career. The information contained in the entry is of permanent value to the Marine's career and the information is not, or cannot be documented anywhere else in the Service Record Book (SRB) or the Marine's automated record.
3. One of the many leadership tools that a commander has at their disposal is counseling and rehabilitation for their Marines. Marine Corps policy is that reasonable efforts at rehabilitation should be made prior to initiation of separation proceedings and that commander is authorized to document those efforts by a page 11 counseling entry per the IRAM. MCO P1900.16, the Marine Corps Separation Manual, paragraph 6105, sets forth policy pertaining to counseling and rehabilitation.
4. MCO 1610.12, the U.S. Marine Corps Counseling Program states in part that "Counseling is that part of leadership which ensures, by mutual understanding, that the efforts of leaders and their Marines are continuously directed toward increased unit readiness and effective individual performance."
5. It is noted that documented evidence to support his claim that "the page 11 entries from my service record.....are unjust." were not included in the application as required by the IRAM. Sergeant [REDACTED] was contacted by this Branch on 21 March, 2000 requesting the missing documentation.

Subj: BCNR APPLICATION IN THE CASE OF SERGEANT [REDACTED]
[REDACTED] USMC

6. The following comments concerning the page 11 entry dated 950619 are provided:

a. The counseling entry meets the elements of a proper page 11 counseling in that it lists specific deficiencies and recommendations for corrective action, where assistance can be found, and states that Sergeant [REDACTED] provided the opportunity to make a rebuttal statement. Additionally, he was afforded an opportunity to annotate whether or not he chose to make such a statement and if made, a copy of the statement would be filed in the service record. Sergeant [REDACTED] chose "not to" make such a statement.

b. Sergeant [REDACTED] stated via telephone conversation with Mr. [REDACTED] on 21 March 2000 that he was involved in a motor vehicle accident with his assigned government vehicle.

c. It is not known if it was the Ninth Marine Corps District (9thMCD) policy requiring all recruiting personnel involved in a motor vehicle accident, whether at fault or not, to receive a page 11 counseling entry for an incident.

7. The following comments concerning the page 11 entry dated 960723 are provided:

a. The counseling entry does not meet the elements of a proper page 11 counseling. The entry lists as a deficiency "the pattern of complaints against you alleging spousal abuse by your wife.".

b. The counseling entry does contain recommendations for corrective action, where assistance can be found, and states that Sergeant [REDACTED] provided the opportunity to make a rebuttal statement. Additionally, he was afforded an opportunity to annotate whether or not he chose to make such a statement and if made, a copy of the statement would be filed in the service record, elements of a proper page 11 counseling entry. It is noted that Sergeant [REDACTED] chose "not to" make such a statement even though he claims to have submitted one.

c. Sergeant [REDACTED] claim that this page 11 was unjust is not documented in his application as required by the IRAM. With his permission, [REDACTED] was contacted via telephone in reference to "the pattern of complaints against you alleging spousal abuse by your wife." on 22 March 2000.

Subj: BCNR APPLICATION IN THE CASE OF SERGEANT [REDACTED]
[REDACTED] USMC

d. Mrs. [REDACTED] stated that during the April 1996 time frame, they were experiencing several stressful events: the birth of their second child on April 2, 1996; her lengthy stay at the hospital; the immediate hospitalization of their newborn son for an extended period of time following release from the hospital; and the never ending demands placed upon her husband in fulfilling his responsibilities as a canvassing recruiter, stressors that would strain any marriage. She was compelled to take appropriate action by staying with her mother for a brief period of time to give themselves and their marriage some relief from the traumatic family experience and recruiting tensions. Mrs. [REDACTED] vehemently expressed how offended she was at the time she was apprised of these allegations by people who befriended her whom she thought were close. She very sternly implied that they were not true. [REDACTED] stated that she became aware of these allegations when questioned by an investigating officer yet did not know the results.

e. Guidelines in effecting appropriate measures when a command is in receipt of a report or reports of spouse abuse were not in compliance per paragraph 2001.2 and Appendix A of MCO P1752.3B, Marine Corps Family Advocacy Program Standing Operating Procedures. It states that those service members deemed not suitable for rehabilitation may receive a page 11 entry for cases of SUBSTANTIATED spouse abuse. Additionally, the process by which an offender is held accountable for his behavior is a page 11 entry for all SUBSTANTIATED reports of family maltreatment. In Sergeant [REDACTED] case, this page 11 entry refers to allegations instead of substantiated "spousal abuse".

8. The following comments concerning the page 11 entry dated 960724 are provided:

a. The counseling entry meets the elements of a proper page 11 counseling in that it lists specific deficiencies and recommendations for corrective action, where assistance can be found, and states that Sergeant [REDACTED] provided the opportunity to make a rebuttal statement. Additionally, he was afforded an opportunity to annotate whether or not he chose to make such a statement and if made, a copy of the statement would be filed in the service record. Sergeant [REDACTED] chose "not to" make such a statement.

Subj: BCNR APPLICATION IN THE CASE OF SERGEANT [REDACTED] USMC

b. Sergeant [REDACTED] claim that this page 11 was unjust is documented by the statement provided by Gunnery Sergeant [REDACTED] his immediate supervisor for the year preceeding the page 11 entry.

c. In a telephone conversation between Master Sergeant [REDACTED] and [REDACTED] on 22 March 2000, he stated that there was never a time that Sergeant [REDACTED] professionalism, integrity, and conduct was questioned. The only fault that Sergeant [REDACTED] was what Marine Noncommissioned Officers (NCOs) exemplify throughout the Marine Corps, being a Marine NCO and treating all juniors (applicants and poolees), male and female, equally.

d. Master Sergeant [REDACTED] position as the Noncommissioned Officer in Charge of Recruiting Substation Olathe, KS had the responsibility of operating that office. Any and all discrepancies concerning the operation of that office was his responsibility. At no time was he made aware of any allegation of recruiter malfeasance on behalf of Sergeant [REDACTED] informed that Sergeant [REDACTED] will receive the page 11 entry.

e. Sergeant [REDACTED] claim that this page 11 was unjust can not be discounted when viewed with the other two page 11 entries (960723 and 970122), having the appearance of establishing a pattern of misconduct in an attempt to take adverse action against him.

9. The following comments concerning the page 11 entry dated 970122 are provided:

a. The counseling entry does not meet the elements of a proper page 11 counseling in that it fails to provide a recommendation for corrective action, does not contain language that Sergeant [REDACTED] was provided the opportunity to make a rebuttal statement, nor states that he was afforded the opportunity to annotate whether or not he chose to make such a statement per the provisions of paragraph 1000.5c of the IRAM.

b. The counseling entry contains adverse matter that reflects unfavorably upon Sergeant [REDACTED] mental, moral, or professional qualifications.

Subj: BCNR APPLICATION IN THE CASE OF SERGEANT [REDACTED]
[REDACTED] SMC

c. When viewing this page 11 with the other two page 11 entries (960723 and 960724), it has the appearance of establishing a pattern of misconduct in an attempt to take adverse action against him.

10. Sergeant [REDACTED] was on his final year of recruiting duty and had been successful up to this point as documented by his numerous awards. It can be possible that outstanding performance be degraded due to a pattern of misconduct. However, it seems unlikely in this case based upon a sustained level of outstanding performance until his relief on 14 May 1997.

11. Sergeant [REDACTED] the subject of nonjudicial punishment (NJP) on 17 March 1997 concerning events surrounding the enlistment of a Marine that allegedly transpired more than 12 months prior (January 1996) that led to him being recommended for relief from recruiting duty. Sergeant [REDACTED] Commanding Officer recommended that he be relieved from recruiting duty on 21 March 1997 in reference to this NJP that was subsequently set aside and a rehearing directed by the Commanding Officer, 9thMCD on 12 May 1997. The Commanding Officer, 9thMCD recommended relief from recruiting duty on 11 April 1997 in reference to the same NJP. Consequently, the nonjudicial punishment rehearing was conducted on 20 May 1997 and remained in effect until 16 July 1999.

12. It is noted that on 14 May 1997, Sergeant [REDACTED] relieved for cause due to disciplinary reasons, six days prior to the nonjudicial punishment rehearing. More significantly, he was relieved four months prior to his normal 'end of tour' rotation date that would have been effected during September 1997.

13. As stated in paragraph 8a above, the page 11 counseling entry dated 960724 meets the elements of a proper page 11 entry if it was a stand alone entry. However, when placed in perspective as a whole with the page 11 counseling entries dated 960723 and 970122, and combined with the 17 March 1997 NJP, it appears that the intention was to establish a pattern of misconduct in order to effect adverse action against Sergeant [REDACTED] a relief for cause from recruiting duty.

Subj: BCNR APPLICATION IN THE CASE OF SERGEANT [REDACTED]
[REDACTED] SMC

14. Recruiting duty routinely places Marines into working long hours under tremendous pressure, living a lifestyle similar to our deployed operating forces under combat conditions, a duty which requires them to be away from family and home. Sergeant [REDACTED] had passed the rigid screening process for assignment, undergone the rigorous training requirements for the duty, and was serving his last year of a demanding assignment as a recruiter. This is an indication that he possessed, to a high degree, qualifications considered necessary for promotion and career development.

15. In view of the above, it is recommended that:

a. We defer advisory/opinion recommendations concerning the page 11 counseling entry dated 950619.

b. Approve Sergeant [REDACTED] request for removal of the page 11 counseling entries dated 960723, 960724, and 970122 from his Official Military Personnel File (OMPF) and Service Record Book (SRB).

16. Point of contact is [REDACTED] at [REDACTED].

[REDACTED]
[REDACTED]
Head, Field Support Branch
Manpower Management Information
Systems Division



UNITED STATES MARINE CORPS
MARINE CORPS RECRUITING COMMAND
3280 RUSSELL ROAD
QUANTICO, VA 22134-5103

744-00
IN REPLY REFER TO
1070
re
3 Apr 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS

Subj: ADVISORY OPINION IN THE CASE OF SERGEANT [REDACTED]
[REDACTED] USMC

1. After a careful review of Sergeant [REDACTED] request, we recommend that his petition be approved.

2. Sergeant [REDACTED] received page 11 entries that resulted in Non-Judicial Punishment (NJP) dated 990317. Following the NJP, he was relieved for cause from Recruiting Duty. The NJP on which the relief was based on was subsequently set aside.

3. Our opinion is that any documents concerning Sergeant [REDACTED] NJP and relief for cause package should be removed from his Official Military Record.

[REDACTED]
By direction